IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re application of		)
		)
	Anthony John Goodacre, *et al*	)
		)
Serial No.:	10/010,190	)
		)
Filed:	December 5, 2001	)
		)
For:	Outputting Dynamic Local Content on Mobile Devices	)
		)
Examiner:	Cesar B. Paula	)
		)
Group Art Unit:	2178	)

REPLY BRIEF OF APPELLANT

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On October 31, 2007, the Examiner mailed its Response to Appellant's timely filed Appeal Brief. This Reply Brief is being filed under the provisions of 37 C.F.R. § 41.41. This brief is being filed on Wednesday, December 19, 2007 and is therefore timely under 37 C.F.R. § 41.41.

ARGUMENT

I.   Introduction

Appealed claims 1-39 and 41-49 have been rejected as being unpatentable under 35

U.S.C. § 103(a). Appellants argue that the Examiner has not recited any reference teaching the

limitation "the network computing device monitoring content denoted in a registration such that

when dynamic content of interest changes, the dynamic content is transported to the mobile

computing device," which is found in each of the appealed claims.[1] The Examiner argues that

this limitation is taught by U.S. Pat. No. 5,835,914 ("Brim"), and admits that no other reference

cited by the Examiner teaches this limitation. Thus, this appeal boils down to whether the Brim

reference teaches a "network computing device monitoring content denoted in a registration such

that when dynamic content of interest changes, the dynamic content is transported to the mobile

computing device." It does not.

II.   The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Any Claim

As explained in the Appeal Brief, the limitation "the network computing device

monitoring content denoted in a registration such that when dynamic content of interest changes,

the dynamic content is transported to the mobile computing device," is found in each of the

appealed claims. Thus, in order to establish a prima facie case of obviousness for any claim, the

Examiner must recite a prior art reference teaching this limitation. As explained above, Brim is

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[1] Claims 1 and 41 recite the similar limitation of "monitoring content denoted in a registration and when dynamic content of interest changes, transporting the dynamic content to the mobile computing device." However, for purposes of the arguments made in this Appeal, these limitations of claims 1, 27, 41 and 43 are not materially different.

the only reference cited by the Examiner as teaching this limitation. However, Brim does not

teach this limitation because, as admitted by the Examiner, Brim teaches "continuously"

retrieving data. Brim also does not teach a network computing device that "monitors" the

dynamic data.[2]

A. Brim Does Not Teach "The Network Computing Device Monitoring Content Denoted in a Registration such that When Dynamic Content of Interest Changes, the Dynamic Content Is Transported to the Mobile Computing Device"

1. The Parties Agree that Brim Teaches "Continuously" Retrieving Data

The Examiner vociferously argues that Brim teaches a client device that "continuously"

retrieves data from the server, or network computing device, which "continuously" sends data to

the client device: "[T]he stock prices requested by the controls [in Brim] are **presented**

continuously or streamed to the browser" (Examiner's Answer, at p. 28 (emphasis in

original)); "**If there is continuous retrieval by the client, there must also be continuous**

sending on the part of the server[.]" (*id.* (emphasis in original)); "[A]s shown above Brim

teaches a well-known technique, where a mobile handheld device continuously retrieves

dynamic data, such as the stock prices." (*id.* at p. 29); "**The client needs not to inform the**

server every certain period of time that the dynamic data is needed. This would be a

discrete retrieval, and not a continuous one as taught by Brim." (*id.* (emphasis in original)).

"**This continuous retrieval** [in Brim] **would be very helpful in cases such as the retrieval of**

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[2] Although Appellants believe that the Examiner has failed to overcome any of the arguments set forth in the Appeal Brief, Appellants will not reiterate each of the arguments set forth in the Appeal Brief. Instead, Appellants' Reply Brief will focus solely on the two most conspicuous errors of the Examiner's Answer. Nonetheless, Appellants' continue to argue that the Examiner's rejections should be removed for each of the reasons set for the Appeal Brief.

stock prices where the need to know the latest information is essential[.]" (*id.* (emphasis in original)). Thus, the Examiner undeniably argues that Brim teaches a client device that "continuously" retrieves dynamic data, and a networking computer that "continuously" sends dynamic data. Appellants could not agree more.

        i.   *A Mobile Devices "Continuously" Retrieving Dynamic Data and Network Computing Devices "Continuously" Sending Dynamic Data are the Antithesis of the Recited Network Computing Device Sending Data to a Mobile Device Only When the Dynamic Data Changes*

Brim's teaching of continuously retrieving and sending dynamic data is the very antithesis of Appellants' claimed invention. The devices and methods taught in Brim constantly use bandwidth in the communication lines between the mobile device and the network computing device. The claimed invention, on the other hand, requires far less bandwidth due to the limitation of "the network computing device monitoring content denoted in a registration such that when dynamic content of interest changes, the dynamic content is transported to the mobile computing device."

Because the mobile device in Brim "continuously retrieves" dynamic data, the mobile device constantly sends requests to the networking computer for the dynamic information. Consequently, these requests continuously occupy bandwidth in the communication lines. In response to the constant stream of requests sent by the mobile device, the network computing device in Brim, as stated by the Examiner, "**must also be continuously sending**" the dynamic content to the mobile device. Consequently, these responses by the network computing device also continuously occupy bandwidth in the communication lines. Importantly, the continual

requests sent by the mobile device, and the continual responses sent by the network computing device, are sent regardless of whether the dynamic data changes. Thus, both the mobile device and the network computing device send requests / responses and occupy bandwidth in the communication lines 24 hours a day, 7 days a week, 365 days a year, i.e. "**continuously**."

These "continuous" requests and responses taught in Brim are in stark contrast to Appellants' claimed invention. First, because the dynamic data of the claimed invention is denoted by a registration, the mobile device does not need to send requests for the dynamic data. By eliminating the requests from the mobile device, Appellants' claimed invention frees up the bandwidth occupied by the continual requests of Brim.

Second, the network computing device in the claimed invention only sends the dynamic data *when the dynamic data changes*. For example, if the dynamic data only changes three times during the day, the network computing device of the claimed invention will only send the dynamic data three times during that day, i.e., when the dynamic data changes. Again, by not "continuously" sending dynamic data that has not changed as in Brim, the claimed device frees up even more bandwidth in the communication lines.

Thus, the limitation of "the network computing device monitoring content denoted in a registration such that when dynamic content of interest changes, the dynamic content is transported to the mobile computing device" in the present invention significantly decreases the bandwidth demands over the teachings of Brim. However, even though the claimed invention uses far less bandwidth than the invention taught by Brim, the information displayed on the mobile device of the claimed invention is just as current as the information displayed on the

mobile device of Brim. Thus, rather than teaching this limitation, Brim is perfect example of one of the problems solved by this limitation. Brim simply does not teach "the network computing device monitoring content denoted in a registration such that when dynamic content of interest changes, the dynamic content is transported to the mobile computing device," and the Examiner's citation of Brim as teaching this limitation is mistaken. Consequently, the Examiner's rejections should be overturned.

2. Brim Does Not Teach the Network Computing Device "Monitoring" the Dynamic Content of Interest for Changes

Nowhere does the Examiner argue that Brim teaches a network computing device that "monitors" the dynamic content of interest for changes, as required by the claims. Instead of addressing Appellants' argument on this limitation as set forth in the Appeal Brief, the Examiner first misconstrues Appellants' argument then dismisses the argument as improper. Specifically, the Examiner argues that "the features upon which Appellant relies (i.e., 'dynamic content denoted by a registration at the network computing device, page 22, ii) are not recited in the rejected claim(s)." (Examiner Answer, at p. 29). This quotation of the Appeal Brief by the Examiner is improperly truncated. The result is a mischaracterization of Appellants' argument.

Appellants do not argue that the registration must be located at the network computing device, as suggested by the Examiner. Instead, Appellants argued in the Appeal Brief that Brim does not teach "*monitoring* dynamic content denoted by a registration at the network computing device." (Appeal Brief, at p. 22 (emphasis added)). Thus, Appellants argued that the network computing device must do the "monitoring" of the dynamic content denoted by the registration.

The Examiner's argument that Appellants relied on the registration being located at the networking computing device is nothing more than a misconstruction of the argument set forth in the Appeal Brief.

The foregoing notwithstanding, the Examiner has not pointed to any teaching in Brim of a network computing device monitoring the dynamic content for changes, as argued at section A(3)(iv), pp. 25-26, of the Appeal Brief. Because Brim "continuously" requests and sends the dynamic information, it is not surprising that Brim does not teach monitoring the dynamic content for changes. The Examiner's failure to point to any reference, including Brim, that teaching monitoring the dynamic content for changes requires removal of the Examiner's rejections for failure to present a *prima facie* case of obviousness.

CONCLUSION

For the foregoing reasons, and the additional reasons set forth in the Appeal Brief, Appellant respectfully requests the Board to overturn the Examiner's rejections of the appealed claims 1-39 and 41-49.

Dated this 19th day of December, 2007.

Respectfully submitted,

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